

AG Contract No. KR03-1422TRN
ADOT ECS File: JPA 03-090
Project No. HRF-MIA-0-778
TRACS No. HF078 02C
Section: Sullivan Rd.
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
TOWN OF MIAMI

THIS AGREEMENT is entered into 9 December, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF MIAMI acting by and through its TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The State has approved the exchange of \$340,000.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2003 to the Town for the construction of improvements to Sullivan Street, and such funds will be repaid to the State by withholding from the Central Arizona Association of Governments (CAAG) federal funds and the obligation authority for federal funds in the amount of \$358,546.00 in Fiscal Year 2003.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 26474
Filed with the Secretary of State
Date Filed: 12/09/03
Janice K. Brewer
Secretary of State

By: Vincent Huenebold

II. SCOPE OF WORK

1. The Town will:

a. Call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor(s). Be responsible for any additional funds required to complete the Project, and for any contractor claims for extra compensation due to delays or whatever reason.

b. Invoice the State for thirty percent of the Project construction cost, at the start of construction.

c. Invoice the State for thirty percent of the Project construction cost, at the thirty percent Project construction completion stage, and for thirty percent of the Project cost at the sixty percent Project construction completion stage.

d. Upon final project review, by the Town, CAAG, and the State representatives, invoice the State for the remaining ten percent of the Project construction cost at the one hundred percent project completion stage.

e. Be responsible for any additional funds required for construction of the Project, and for any claims for extra compensation for whatever reason. Comply with all applicable State laws, rules and regulations.

2. The State will:

a. Within 30 days after receipt and approval of construction invoices at the start of construction, thirty percent, and sixty percent construction completion stages, advance the Town HURF funds in the amount of thirty percent of \$340,000.00 total for construction.

b. Within 30 days after receipt and approval of construction invoices for the remaining ten percent of the Project construction, advance the Town HURF funds in the final ten percent amount of the \$340,000.00 total for construction.

c. Withhold from CAAG, federal funds and the obligation authority of federal funds in the amount of \$358,546.00 in Fiscal Year 2003 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds:** Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007


Town of Miami
John Encizo, Public Works Director
500 Sullivan Street
Miami, AZ 85539

10. In Accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF MIAMI

STATE OF ARIZONA
Department of Transportation

By 
ELIAS Y. GARCIA
Mayor

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST

By 
MARGIE LOPEZ
Town Clerk

RESOLUTION NO. 982

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF MIAMI, ARIZONA, AUTHORIZING THE MIAMI TOWN COUNCIL TO ENTER INTO AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION, AG CONTRACT NUMBER KR03-1422TRN, PROJECT: SULLIVAN ROAD HURF EXCHANGE PROGRAM.

WHEREAS the Town of Miami is authorized by law to enter into Governmental Agreements, and

WHEREAS Arizona Revised Statute Section 48-572 empowers the Town to enter into agreements for highway, street and road improvements, and

WHEREAS the State of Arizona has approved the exchange of \$340,00.00 in Highway User Revenue funds (HURF) for the fiscal years 2003, and

WHEREAS the Town desires to enter into an agreement between the State of Arizona and the Town for exchange of such funds.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Town Council of the Town of Miami, Gila County, Arizona that the Town is hereby authorized to enter into an agreement with the Arizona Department of Transportation for transfer of HURF funds, and further that Margie Lopez, Town Clerk and Elias Garcia, Mayor are authorized to execute the contract and any amendments thereto on behalf of the Town of Miami.

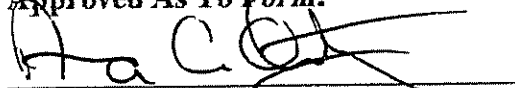
PASSED AND ADOPTED by the Town Council of the Town of Miami, Arizona, this 3rd day of November, 2003.


Elias Garcia, Mayor

Attest:


Margie Lopez, Town Clerk

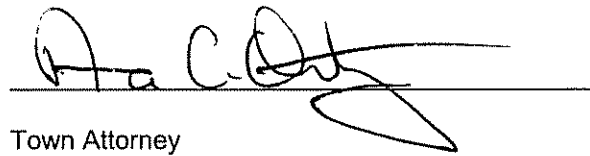
Approved As To Form:


Anna C. Ortiz, Town Attorney

APPROVAL OF THE TOWN OF MIAMI ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF MIAMI, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 4TH day of November 2003


Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1422TRN (JPA 03-090), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 17, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.